HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6551 OF 1999.

Babulal Rajdhar Patil,
Age: 41 years, R/o:
Maharnagar, Gold Mohar CHS,
Room No. 201, Adharwadi,
Nr. Shree Comples,
A/p: Kalyan(w), Thane -421 301. Petitioner.

Versus.

1. Director General,
Railway Protection Force,
Railway Board, Rail Bhawan,
New Delhi - 110 001.

2. Inspector General, RPF.,
(Central Railway), CST Complex,
Fort, Mumbai 400 001.

3. The Divisional Security
Commissioner, RPF, (Central Rl.)
CTS. Complex, Fort,
Mumbai 001.

4. The Security Commissioner,
Th: Asstt. Security Commissioner,
RFP, (Central Rl),
Sub Div. Headquarter, Mulund,
Mumbai 81. ..Respondents.

Shri. B.S.Dhuri for the Petitioner.

CORAM: S.B.MHASE &
D.G.KARNIK, JJ.

DATE : JANUARY 13, 2006.

ORAL JUDGMENT (PER D.G.KARNIK,J.):

1. Heard learned counsel for the petitioner.

None present for the respondents.

2. By this petition, the petitioner claims a declaration that he had completed more than 10 years of qualifying service in Railway Protection Force (for short, "RPF".) and is entitled to a pro-rata penesionary benefits.

3. The brief facts of the case are:

. The petitioner was selected and sent for initial training by Assistant Security Commissioner (RPF), Central Railway from April 3, 1978. After completion of the initial training the petitioner was appointed as a constable in RPF of the Central Railway from December 3, 1978. The petitioner worked in RPF till the year 1988. The petitioner applied to the respondent for permission to join Air India as a security guard and the petitioner was relived by the Assistant Security Commissioner, RPF, Mulund Sub-Division on May 17, 1988 to enable him to join Air-India. The petitioner was appointed as a security guard in Air India from May 24, 1988. After confirmation of the probation in Air India, the petitioner by his letter dated May 28, 1991 informed the respondents that he has been confirmed as a security guard in Air India with effect from December 1, 1988, and therefore he was tendering resignation

from RPF service. By the said letter, the petitioner also requested the respondent to pay to him the amount of his Provident Fund, and the amount deducted towards the Welfare Fund and other terminal benefits.

4. It appears that the petitioner was not paid the amount which he had contributed towards the Welfare Fund (Kalyan Nidhi), and no pencianary benefits were sanctioned to him. The petitioner corresponded with the respondent by letters dated 29th December 1992 and 17th March 1994 for claiming the amount of welfare fund. It is not clear whether the amount of welfare fund has since been paid to the petitioner. However, learned counsel has adressed no arguments regarding the welfare Fund.

5. It appears that sometime prior to the filing of the present petition, the petitioner demanded that he was entitled to a pension, as he had completed pensionable service. The claim of the petitioner for pension was not granted. Therefore, the petitioner has filed this petition for claiming pension.

6. Learned counsel for the petitioner submits that the employees of the RFP are entitled to pension

on retirement after completing 10 years of service. Admittedly, the petitioner has not completed 10 years of service as he was appointed as a constable on December 3, 1978 and he worked there only till May 17, 1988. However, the learned counsel for the petitioner, submits that the period spent by the petitioner for the initial training commencing from March 8, 1978 should be taken into consideration for computing the pensionable service. In support of his submission, he relied on Rule-38 of the Railway Services (Pension) Rules, 1993 (for short, "Pension Rules, 1993.")

7. Sub-Rule 2 of Rule-1 of the Pension Rules, 1993 provides that Rules would come into force on the date of their publication in the Official Gazette. The Rules were published in the Official Gazette on December 3, 1993. The Rules, therefore, came into force with effect from December 3, 1993 on that day the petitioner was not in the employment of RPF having already resigned on May 17, 1988. In our view, therefore, the Pension Rules, 1993 were not applicable to him and he is not entitled to claim any benefit of Rule 38 of Pension Rules, 1993.

8. Assuming, however, that Pension Rules,

1993 are applicable to the petitioner, we are of the view that the case of the petitioner is not covered by Rule 38 of Pension Rules, 1993. Rule 38 of Pension Rules, 1993 reads thus:

> "The Ministry of Railways may, by order, decide whether the time spent by a railway servant under training immediately before his appointment to service under the railway shall count as qualifying service."

. Rule - 38 of Pension Rules, 1993, provides that the Ministry of Railways may, by order, decide whether the time spent by a railway servant under training immediately before his appointment to service under the railways should be counted as qualifying service. Rule-38 contemplates a decision by a Railway Ministry to include the period of training undergone by the servant in computing the period of service. No decision was pointed out to us taken by the Ministry of Railways exercising power under Rule-38 of Pension Rules, 1993 to treat the period of training of the petitioner in computing the period of service for pension. Since the petitioner had not completed 10 years of service prior to his resignation he is not entitled to a pension.

9. There is yet another difficulty in the way of the petitioner. He has resigned from the service and not retired on attaining age of superannuation. No rule was pointed out to us showing that even even the employee, who resign the service before completion of qualifying period of service of 10 years would be entitled to any pension. There is no provision in the Pension Rules under which the petitioner is entitled to a pension.

10. There is no merit in the petition and the petition is accordingly dismissed. Rule is discharged with no order as to costs.

(D.G.KARNIK,J.) **(S.B.MHASE, J.)**